

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	05-187 (ESH)
v.	:	
	:	
MARK CALLAHAM	:	
<hr/>	:	

**DEFENDANT’S OPPOSITION TO
GOVERNMENT’S NOTICE OF INTENT TO IMPEACH DEFENDANT WITH HIS
PRIOR CONVICTIONS PURSUANT TO RULE 609**

Mr. Mark Callaham, through undersigned counsel, respectfully submits the following in opposition to the Government’s Notice of Intent to Impeach Defendant With His Prior Convictions Pursuant to Rule 609.

Counsel submits that the government has not and cannot meet its burden, which is to show that the probative value of specific information of his convictions outweighs its prejudicial effect to the defendant. *United States v. Lispcomb*, 702 F.2d 1049, 1063 (D.C.Cir. 1983)(citing *United States v. Fountain*, 642 F.2d 1083, 1092 (7th Cir.) *cert. denied.*, 451 U.S. 993 (1981)).

Counsel submits that any limiting instruction telling the jury to solely consider the defendant’s prior conviction as to credibility and not on the overall issue of guilt during the same time frame would require the jury to perform mental gymnastics beyond the pale. “The naïve assumption that prejudicial effects can be overcome by instructions to the jury, all practicing lawyers know to be unmitigated fiction.” *Krulewitch v. United States*, 336 U.S. 440, 453 (1949)(Jackson, concurring).

WHEREFORE, for the foregoing reasons, any reasons put forth at a hearing on the Government's motion, and any other that this Honorable Court may deem just and proper, Mr. Mark Callaham, through undersigned counsel, respectfully requests that this Court deny the Government's motion.

Respectfully submitted,

JENIFER WICKS

Bar No. 465476

The Law Offices of Jenifer Wicks
The Webster Building
503 D Street, N.W. Suite 250A
Washington, D.C. 20001
(202) 326-7100